

REMARKS

The last Office Action has been carefully considered.

It is noted that claims 1-5 are rejected under 35 U.S.C. 102(b) over the patent to Johnston.

Also, the claims are rejected under 35 U.S.C. 112.

In connection with the Examiner's formal rejection of the claims under 35 U.S.C. 112, the claims have been amended.

Also, the specification has been amended to correct typing errors.

After carefully considering the Examiner's grounds for the rejection of the claims over the art, applicant has amended claim 1, the broadest claim on file, so as to more clearly define the present invention and to distinguish it from the prior art.

Claim 1 as amended specifically defines that in the inventive fishing device which has a rigid lower member, a lee attachable to it, and a net attached to the lower member and slidable over the lee, float means are provided

which include two floats attached to the net at an upper end of the net and spaced from one another horizontally.

When the fishing device is designed in accordance with the present invention, it provides for highly advantageous results. The two floats regulate a minimal weight of fish to be caught. If the weight of the fish is insufficient, then the floats hold in the net and the net does not close thus allowing a little fish to flee. The device is retained by the main lee 4 to allow the net 2 to close. At the same time, the provision of the floats allows the device to maintain the required substantially vertically position. It is possible to drag the device in water to catch more fish and during this process the two floats 6 still retain the net in a substantially vertical position. The fact that the float means include two floats which are attached to the net at the upper end in two points which are spaced from one another horizontally, makes the floating means very efficient and makes the device as a whole very efficient for fishing.

Turning now to the references and in particular to the patent to Johnston, it can be seen that the reference this discloses a fishing trap with a lower member, a net, and a pulley system, as well as a bait. However, the reference does not disclose the new features of the present invention are defined in the amended claim 1. In particular, the device disclosed in the

reference does not have two floats which are connected at the top of the net in two points spaced from one another in a horizontal direction.

Claim 1 should be considered as patentably distinguishing over the art, since its features are not disclosed in the reference and can not be derived from it as a matter of obviousness.

The Examiner's attention is also respectfully directed to the features of the new claim 8. This claim specifically defines that the fishing device in accordance with the present invention has two side lees which are attached to the opposite ends of the lower rigid member, and the net is also attached to the same opposite ends of the lower rigid member, while the net above the lower rigid member is slidable on the side lees. As a result, when fish hits the net the net slides over the side lees, so that a bag is formed under the lower member in which fish is caught.

Turning now to the references, it can be seen that none of the references teaches this specific design of the fishing device which is formed so that the net slides over the side lees and the bag which surrounds and catches the fish is formed under the rigid lower member.

Thus, claim 8 should be considered as patentably distinguishing over the art for the same reason as the above specified claims, in particular because its features are not disclosed in the references and can not be derived from them as a matter of obviousness.

The Examiner rejected the original claims over the reference under 35 U.S.C. 102 as anticipated. In connection with this, it is believed to be advisable to cite the decision in re Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 221 USPQ 481, 485 (Fed. Cir. 1984) in which it was stated:

"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim."

Definitely, the reference does not show each and every element as defined now in claims 1 and 8.

It is respectfully submitted that the reference also does not contain any hint or suggestion for this specific float means as defined in claims 1 and 8.

In order to arrive at the applicant's invention from the teaching of the reference the reference has to be fundamentally modified by including into

it the new features of claims 1 and 8. However, it is known that in order to arrive at a claimed invention, by modifying the references the cited art must itself contain a suggestion for such a modification.

This principle has also been consistently upheld by the U.S. Court of Customs and Patent Appeals which, for example, held in its decision in re Randol and Redford (165 USPQ 586) that

Prior patents are references only for what they clearly disclose or suggest; it is not a proper use of a patent as a reference to modify its structure to one which prior art references do not suggest.

Finally, as explained herein above, the present invention as defined in claims 1 and 8 provides for the highly advantageous results. It is well known that in order to support a valid rejection the art must also suggest that it would accomplish applicant's results. This was stated by the Patent Office Board of Appeals, in the case Ex parte Tanaka, Marushima and Takahashi (174 USPQ 38), as follows:

Claims are not rejected on the ground that it would be obvious to one of ordinary skill in the art to rewire prior art devices in order to accomplish applicants' result, since there is no suggestion in prior art that such a result could be accomplished by so modifying prior art devices.

It is therefore believed that claims 1 and 8 should be considered as patentably distinguishing over the art and should be allowed.

Claims 6 and 7 additionally define that a connecting lee is provided at the upper end of the net, and the floats are attached at the horizontally spaced points of the connecting lee (claim 6) and also that the two lees pass through the connecting lee in these points.

The features of claims 6 and 7 are also not disclosed in the references and can not be derived from them.

Finally, the Examiner's attention is also respectfully directed to the features of claim 5 which define that the bait provided in the fishing device extending from the main lee downwardly toward the net. The features of this claim are also not disclosed in the prior art.

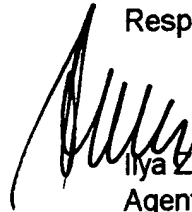
It is therefore respectfully submitted that claims 5, 6, and 7 contain the features which patentably distinguish the present invention not only because these claims depend on the presumably allowable claim 1, but also because they contain a patentable subject matter per se.

As for the other claims, these claims depend on claim 1, they share its presumably allowable features, and therefore it is respectfully submitted that they should be allowed as well.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-243-3818).

Respectfully submitted,



Ilya Zborovsky
Agent for Applicant
Reg. No. 28563